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Federal Communications Commission
Office of the Secretary

BEFORE THE

Federal Communications Commission

In the Matter of	)	
	)	
2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 06-121
	)	
2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

MT. WILSON REPLY TO CLEAR CHANNEL COMMENTS

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SUMMARY

Mt. Wilson FM Broadcasters submitted Comments in this proceeding based upon facts relevant to the remand issues. The Clear Channel Comments consist of unsupported and inconsistent arguments, irrelevant arguments unrelated to the remand issues, advice to the Commission to ignore the intent of the Court of Appeals decision, the flawed (and therefore irrelevant) Statement of Professor Hausman and, finally, outright disingenuousness. While the Clear Channel Comments contain excessive hyperbole, the Comments are devoid of relevant facts. The primary purpose of the Mt. Wilson Reply Comments is to direct the Commission's attention to the shortcomings of the Clear Channel Comments and to destroy the creditability that otherwise would be accorded timely-filed Comments.

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Mt. Wilson FM Broadcasters, Inc. (hereinafter "Mt. Wilson), licensee of station KMZT-FM, Los Angeles, California and standard broadcast station KKGO, Beverly Hills, California, by and through its counsel, respectfully submits its Reply to the Clear Channel Comments (hereinafter "Clear Channel" and/or the "Company").[1]

The purpose of the Further Notice of Proposed Rulemaking (hereinafter "Further Notice") was succinctly set forth in Paragraph 1 of the Further Notice, as follows:

[1] Mt. Wilson has filed a Motion to Strike Clear Channel Comments. The instant Mt. Wilson Reply assumes that the Motion will not be granted and/or will not be timely granted.

> "With this Further Notice of Proposed Rulemaking ("Further Notice"), we seek comment on how to address the issues raised by the opinion of U.S. Court of Appeals for the Third Circuit in Prometheus v. FCC and on whether the media ownership rules are "necessary in the public interest as the result of competition." (footnotes omitted).

The identification of issues (as construed by the Commission) remanded to the Commission is set forth in Paragraph 21 of the Further Notice, summarized as follows:

1. The existing specific local radio ownership limits do not support the Commission's rationale that such limits ensure five equal-sized competitors in most markets;

2. The Commission failed to justify five equal-sized competitors as the appropriate benchmark for measuring competition and did not reconcile such benchmark with the DOJ/FTC Merger Guidelines;

3. The Commission failed to show that the limits ensured that five equal-sized competitors have or would emerge under the numerical limits;

4. Failure of the Commission to explain why it did not take into account "actual market share" when deriving the numerical limits;

5. Failure of the Commission to support the AM subcaps.

The Court of Appeals for the Third Circuit (hereinafter "Court") remand, however, was not entirely "open-ended." The issues identified by the Commission were in fact set forth by the Court's decision within a framework – wherein the Court provided its opinion and/or advised the Commission as to certain issues. The specific issues wherein the Court stated its opinion and/or advice are as follows:

1. Numerical limits are necessary and are supported by a reasoned analysis (Prometheus, pp. 431-432);

2. Specific numerical limits were not supported by a reasoned analysis (Prometheus, pp. 432);

3. The Commission did not sufficiently justify the number "five" as the appropriate benchmark. The concept of five equal-sized competitors as the benchmark for competition is based on a game theory which conflicts with the DOJ/FTC Merger Guidelines (Prometheus, pp. 432-433);[2]

4. Market share is an absolute essential in measuring competition. Commission rationale for not taking into account market share has already been rejected by the Court (Prometheus, pp. 433-434).

With respect to the Court's opinion and advice as to the above-referenced remanded issues and, further, considered in the context of the unusually forceful Court language (i.e., "It defies logic. . . Prometheus, p. 433. . . . Had it [the Commission] proffered the 'market share is too fluid' rationale, we have already rejected that explanation . . ." Prometheus, p. 434), the referenced Court opinion/advice as to these issues matters should be deemed "absolutes" and must be adopted by the Commission as integral elements of the revised radio ownership rules in order to avoid a second remand.

Mt. Wilson's Comments are consistent with the Court's opinion and advice, are directed to the issues raised by the Prometheus decision and include Arbitron Market Share data for the Los Angeles market covering the years 2001-2005. (Attachment 2 to Mt. Wilson Comments). Reference to the Market Share data confirms the Court's unequivocal statement directed to the Commission – "It defies logic to assume that a

[2] Separate and apart from the fact that the Court believes the Merger Guidelines must be followed in determining radio ownership limits, the Court could not reconcile the Commission's reliance on the Merger Guidelines to derive new ownerships for local television stations and ignore the Merger Guidelines in determining local radio ownership limits.

combination of top-ranked stations is the competitive equal to a combination of low-ranked stations" (Prometheus, p. 433) and, further, identifies the dominant entities in the Los Angeles radio market (Clear Channel and CBS, Clear Channel being the most dominant). Indeed, two dominant entities throughout the five-year span have controlled approximately 40% of the market revenue.[3]

The Clear Channel Comments on the other hand primarily focus on matters which are not identified as remand issues, are not relevant to the Commission's request for comments, suggests solutions which are not viable or are beyond the purview of the Further Notice, advocates policies contrary to the Court's intent and in one instance (pertaining to the competitive and economic status of the Company) sets forth an argument contrary to Company management's public statements. Significantly ignored are the matters of competition (other than competition between Clear Channel and satellite radio) among the existing terrestrial radio stations (as evidenced in the Los Angeles radio Arbitron market, Attachment 2 to the Mt. Wilson Comments) and consideration of the likely impact of increasing the radio ownership limits on independent operators with niche programming and/or far fewer stations than the Clear Channel group.

[3] If the Commission's theory of five equal-sized competitors was viable, the Los Angeles market would have five dominant equal-sized stations, none of which singularly would approach 20% of the market revenue. The market share data for the Los Angeles radio market refutes the Commission's theories regarding the number five as the benchmark and as to the emergence of five equal- sized competitors.

I. Program Format Diversity/Localism Are Not Issues in the Further Notice

A substantial portion of the Clear Channel Comments is devoted to format diversity/localism, i.e., Clear Channel station operations in diverse markets throughout the United States (pp. 17-43 of Clear Channel Comments). Initially, it should be noted that neither format diversity nor localism are issues raised by the Court and are not issues on which the Further Notice sought comments.[4] Nevertheless, to put the matter at rest, Mt. Wilson respectfully brings to the Commission's attention that Program format Diversity was specifically addressed and rejected by the Commission as a valid argument in support of more consolidation, stating (2002 Biennial Regulatory Review, Report and Order and Notice of Proposed Rulemaking, (hereinafter, 2002 "Regulatory Review"), 18 F.C.C. Rcd., 13627 (¶ 314),

> "After a careful review of the economic literature, however, we cannot confidently adopt the view that we should encourage more consolidation in order to achieve greater format diversity."

Underlying this conclusion and disputing the argument that ". . . reductions in the numbers of owners in radio markets led to an increase in radio format labels" (2002 Regulatory Review, p. 13740 at ¶ 310), the Commission stated

> "While we agree that the Duncan formats allow a somewhat richer portrayal of the variety of music than the more general format categories, we are not certain how substantial the difference between many of these minor subcategories within the major categories of format are."

[4] As distinguished from the matter of program format diversity, the Commission concluded that Outlet Diversity (in the form of independent ownership) ". . . contributes to our goal of promoting viewpoint." (2002 Regulatory Review, p. 13632 at ¶ 39) and particularly radio which ". . . remains one of the most affordable means by which a potential new entrant can enter the media business." (2002 Regulatory Review, p. 13632 at ¶ 40)

The reality is that group ownership tends to produce multiple variations of the most highly rated formats, a result that will inevitably repeat itself if the existing ownership limits are increased. Pragmatically, formats of Clear Channel and other dominant stations are dictated by ratings. NOT by program diversity (see Attachment 1, Mt. Wilson Comments). The Clear Channel Comments pertaining to both program format diversity and localism are not relevant and are not issues in the Further Notice.

II. The Antitrust Laws Are Not a Sufficient Safeguard to Guard Against Anticompetitive Behavior

Clear Channel suggests that the antitrust laws are sufficient to guard against anticompetitive behavior (Clear Channel Comments, p. 43). In fact, the Los Angeles Clear Channel stations have engaged in anticompetitive conduct, the primary purpose of which was two-fold, 1) require advertisers to place 100% of their radio advertising budget on Clear Channel stations; 2) stifle the competition. The Clear Channel modus operandi enables the advertiser to take advantage of access to the eight Clear Channel stations and, further, to receive discounts. The "quid pro quo," however, requires that the advertiser agree to devote all of its radio advertising budget to Clear Channel stations and to refrain from purchasing radio time on any other Los Angeles radio market station.[5] The specific factual situation described herein has occurred no less than six times during the most recent fall sales period in connection with Mt. Wilson's efforts to obtain new

[5] Obtaining Justice Department action in the factual situation described is not a viable option. Considering the work load and the priorities of the Los Angeles DOJ office and the nature/overall significance of such a complaint, the likelihood of DOJ timely intervention (if ever) is infinitesimal.

advertising for station KMZT-FM.[6] (See Mt. Wilson Comments, pp. 13-14). The ability of Clear Channel (or other dominant licensees with multiple stations) to engage in such anticompetitive behavior exists because Clear Channel is now permitted to operate multiple stations in the Los Angeles market and is the dominant economic force in the Los Angeles radio market.[7] The Commission's presumption that licensees with multiple stations and economic power will not engage in anticompetitive conduct is a fiction, refuted by the facts. In light of Clear Channel's previous anticompetitive conduct, the Clear Channel assertion that the antitrust laws are a sufficient safeguard is blatantly disingenuous. Increasing the radio ownership limits equates to a "free pass" (FCC approval) to continue anticompetitive conduct. The consequences of increasing the radio ownership limits are inevitably predictable: Clear Channel will have still more leverage to exercise its economic dominance and to exacerbate its existing anticompetitive conduct; less revenue will be available to the independent operators; and the number of independent operators will be diminished (or wholly phased out) with the concomitant elimination of diversity of opinion that independent licensees provide.

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[6] An analogous experience occurred in 2003 wherein an existing advertiser on the Mt. Wilson standard broadcast station licensed to Beverly Hills (now identified as KKGO) informed the President of Mt. Wilson that he would no longer buy time on the Mt. Wilson station due to an advertising agreement with Clear Channel which required 100% of his radio advertising budget to be spent on Clear Channel stations. While Affidavits/Declarations are not required for rulemaking proceedings, Declarations affirming the described factual situations will be submitted in connection with a prospective Petition to Deny.

[7] To a lesser extent, CBS Radio (the other dominant station in the market – number 2) also has resorted to similar practices.

III. Clear Channel is Not Economically Threatened by Increased Competition, New Technology

Section III of the Clear Channel Comments (pp. 50-66) presents a hodge-podge of arguments, the primary foundation of which rests upon the contention that increased competition has already adversely affected the radio industry and threatens "... the ability of free, over-the-air radio to remain viable (Comments, p. 51). These arguments include new technology (focusing primarily on the 270 channels collectively provided by XM and Sirius) vis-à-vis the eight-station limit imposed upon terrestrial radio; the decline and prospective continuing decline of terrestrial radio's economic growth; the importance of free, over-the-air radio in crisis situations; the "modest" request to restrict the increase in radio ownership limits to only the 17 largest markets in the country; the support of 23 members of Congress; the efficiency of group ownership; and the argument that ownership should be based on the number of outlets, not audience or market share. These arguments are either irrelevant, half-truths, misleading and/or simply disingenuous.

A. As the Result of the New Technology, Clear Channel Now Operates Stations in the Major Markets in Excess of the Numerical Caps.

The Clear Channel focus on the new technology (and specifically satellite radio) as a justification for increasing radio ownership limits (pp. 51-53) constitutes a biased self-serving and disingenuous viewpoint. Clear Channel asserts (p. 51),

> "Today, free, over-the-air radio faces many more competitive threats... and the competition comes from media that are not crippled by the regulations... that stifle the industry. In every single local market, satellite radio companies ...together deliver 270 channels ....These competitive challenges – and the inequities imposed by the local radio caps – are currently threatening the ability of free, over-the –air radio to remain viable."

In fact, as the Court correctly concluded, competition is better measured by market share, NOT by the number of stations.[8] Initially, it should be noted that satellite radio is a subscription service and, as such, will never command the audience size available to free, over-the-air radio.[9] Indeed, if one accepts the Clear Channel rationale, the only way for free, over-the-air radio to equalize the competition is to allow virtually unrestricted (no ownership caps) group ownership of radio stations (clustering stations) at the expense of the independent operators and the concomitant loss of viewpoint diversity.[10]

With respect to competition between free, over-the-air radio and satellite radio (a part of the new technology), Clear Channel omits the FACT that it benefits from the new technology (in the form of HD radio) and now operates 10, 12, or more stations in the larger markets. In Los Angeles, Clear Channel has five analog FM stations and three AM stations. An HD radio Alliance has been established in the major markets, including Los Angeles, the primary purpose of which is to promote HD radio. Clear Channel is a member of the Alliance. While the HD-1 channel is utilized to simulcast the analog FM station, the HD-2 channel provides separate programming (commercial free for a limited

[8] Although the Court concluded that market share was an essential element of determining competition (Prometheus, p. 434), Clear Channel continues to measure competition solely by the number of outlets – 270 collectively for satellite and eight for a single group owner. The Court concluded that the singular use of numerical outlets to measure competition was flawed. (Id.)

[9] The future of competing satellite radio operators is in doubt (See Appendix A). Additionally, the trade press has reported satellite radio/SEC problems, i.e., counting as subscribers unsold new cars equipped with satellite receivers and the failure to report prior subscribers who did not renew.

[10] The Clear Channel Comments state at p. 51, beginning on line 2 ". . . the enhanced opportunities for clustering stations together in local groups has not had any adverse effect on competition.[154] Footnote 154 states "See supra Section II.D." The Comments do not include a section identified as "II.D." The unsupported allegation is analogous to the Commission's position that five equal-sized competitors is the right benchmark for competition and deserves the same comment as the Court stated in responding to such Commission position – "It defies logic. . . ." Prometheus, p. 433.

period of time). Consequently, Clear Channel now operates in Los Angeles five FM analog stations and at least five FM digital stations (HD-2), all of which provide separate music formats. In addition to at least 10 FM stations, Clear Channel operates three AM stations in the Los Angeles market, a total of no less than 13 separate format stations. Pragmatically, Clear Channel now operates more stations than the "modest" increase it seeks. HD radio holds the potential to provide multi-separate channels.[11] Considering the existing economic dominance of Clear Channel in the Los Angeles Arbitron market (see Mt. Wilson Comments, Attachment 2), an increase in the radio ownership limits to satisfy boardroom demand for ever increasing profits is not in the public interest and surely will further imperil the independent operators.

Terrestrial (free, over-the-air) radio has and will continue to benefit from new technology, (such as HD radio, a fact acknowledged by Clear Channel at p. 57 of its Comments) and to remain competitive without the necessity of increasing radio ownership caps.[12] Conversely, if the clear Channel "modest" request is adopted, then the HD radio channels should be counted for purposes of determining compliance with the multiple ownership rule.

[11] The number of potential HD multicast channels is dependent upon formats. Tests show that it is possible to achieve two near-CD quality channels, plus up to four additional voice-grade channels (see Appendix B).

[12] According to the Clear Channel Comments (p. 57), however, only the mid-sized and smaller markets will benefit from the diversity offered by HD radio – a position which lacks a basis and defies common sense.

B. The Competitive Threats, the Dire Economic Consequences for the Radio Industry Predicted by the Clear Channel Comments Are Contrary to the Company's Second Quarter 2006 Report and to the Public Statements of Clear Channel Management.

The Clear Channel Comments (pp. 51-53, 57) plead dire economic consequences for the radio industry absent relaxation of the ownership caps in the major markets, i.e., lowered forecast for terrestrial radio's long-term growth (pp. 51-52); decline in time spent listening to radio over the last decade, a trend that will continue over the next five years (p. 52); radio advertising decline in 2006 (p. 52); radio revenue decline steadily since 2002 when considered as a percentage of total U.S. advertising revenues (p. 52);[13] decline in stock value (p. 52); and "... large-market stations... currently facing particularly significant financial struggles" (p. 57, line 2).

The consequences set forth in the Clear Channel Comments do not apply to Clear Channel and are in fact at variance with the Company's Second Quarter 2006 Report. Company revenues were approximately \$1.9 billion – an increase from the \$1.7 billion reported for the second quarter of 2005. The increase in revenues spanned all operating segments and was led by the Company's outdoor advertising segment with 9% growth and the radio segment with a 6% increase to \$963.5 million (see Mt. Wilson Comments, Attachment 3). Mark P. Mays, Chief Executive Officer is quoted as follows (Mt. Wilson Comments, Attachment 3):

> "As we take steps to secure our growth over the long-term, we remain committed to generating profitable growth and cash returns for our shareholders.... We remain very optimistic about our growth prospects in 2006.... Our operating momentum has continued into the current quarter. Our radio division's

[13] Absent the decline of Clear Channel revenues, decline considered as a percentage of total U.S. revenues is irrelevant.

> performance surpassed our expectations and once again far outpaced the industry. Our top-25 radio markets performed particularly well, generating the highest percentage growth of any of our markets."

Randall Mays, President and Chief Financial Officer commented as follows (Mt. Wilson Comments, Attachment 3),

> "Our second quarter results reflect strong growth and healthy fundamentals across our operations. . . . As we continue to convert our audience gains into top-line growth, we will continue to generate profitable returns for our shareholders. Looking ahead, our solid balance sheet and tremendous financial flexibility support our efforts to maximize the value of our assets."

Following the release of the Clear Channel Second Quarter Report, analysts shared management's optimism. Fred Moran, media stock analyst for the Stanford Group stated (Mt. Wilson Comments, Attachment 3),

> "Advertisers [on Clear Channel stations] feel like they are getting more for their money because ratings are climbing while competing stations are in decline. . . and the evidence is that the growth has turned strongly positive despite the radio industry still struggling."

An analyst for Bank of America, Jonathan Jacoby (Mt. Wilson Comments, Attachment 3), stated that Clear Channel radio growth "should outpace the industry for the balance of the year."

While the Clear Channel Comments portray an industry (which includes Clear Channel) struggling to survive, Clear Channel Management proclaims a very positive picture – the increase in Company revenue, the stellar performance of the radio division beyond expectations, the Company-wide record of strong growth and healthy fundamentals, optimism for growth prospects in 2006. The shareholders, the investors, the general public are told one story; the FCC is told the opposite.

Management's message is loud and clear. The Company is thriving; the radio division exceeded expectations; and the "bottom line" Company objective is "generating profitable growth and cash returns for our shareholders" – "maximize the value of our assets." Management's message is intended to accurately reflect the status of the Company, future expectations and the objectives of the Company whereas the Clear Channel Comments describe a struggling industry, an argument even if flawed and/or untrue, is deemed necessary in order to support an increase in radio ownership caps – irrespective of the "suspect" validity. In evaluating Clear Channel Comments, the Commission should reasonably assume that the Company's Second Quarter Report is accurate; that the statements directed to the general public (including shareholders and investors) by top Company officials are truthful; and, therefore, should reject the Clear Channel arguments set forth in the Comments which are contrary to Management's public position.

As evidenced by the Company's public posture (and as distinguished from the Clear Channel Comments), Clear Channel is an economically healthy company, including its radio division; it is not a company fearful of competition from satellite radio (or any other new technology); it is not a company that needs less regulation in order to survive. Its primary objective is to maximize profitability for its shareholders. Maximizing profitability (a legitimate private interest) does NOT equate to the public interest. The competitive threats, the prospective dire consequences described by the

Clear Channel Comments do not exist at Clear Channel and cannot be accepted as a basis for increasing radio ownership limits. There is no valid public interest reason to increase radio ownership limits.

C. The Importance of Free, Over-the-Air Radio in Crisis Situations.

The Clear Channel Comments (pp. 53-56) are devoted to the significant role played by free, over-the-air radio stations (including Clear Channel stations) in the crisis conditions resulting from Hurricane Katrina. While such information is enlightening (and deserves to be lauded in the appropriate circumstances), the Further Notice is not the appropriate circumstance. The value of local radio in crisis situations is not in question, is not an issue posed by the Further Notice and clearly is not relevant as to whether the radio ownership caps should be modified, either up or down.

D. The "Modest" Request to Restrict the Increase in Radio Ownership Limits to the Seventeen Largest Markets in the Country Equates to a Sheep in Wolf's Clothing.

The seventeen largest markets contain a population of approximately 87,000,000 persons (based on U.S. Census estimates of all persons 12 or older updated and projected to January 1, 2007.[14] As is clearly apparent, the Clear Channel proposal is intended to "milk" the largest and most economically productive markets in the United States. The focus on the largest markets (Comments, pp. 56-59) is purely economically driven and would benefit only the largest group owners; the alleged public interest factors are mere "window dressing" – absolutely without regard to the traditional public interest factors (i.e., diversity of opinion, competition) and without regard to the adverse impact on the

[14] The Clear Channel Comments dwell on the number of stations in the seventeen markets. Such argument, again, ignores the Court's conclusion that market share, not station numbers, should be the standard for measuring competition.

independent and small radio operators.[15] Markets totaling 87,000,000 persons are not a "modest" request; the true purpose was candidly set forth by Company management ". . . we remain committed to generating profitable growth and cash returns for our shareholders. . . ." (Mt. Wilson Comments, Attachment 3). Private interest, at the expense of the public interest, is not a justification for increasing the radio ownership limits.

E. Congressional Support Is Irrelevant to the Issues Specified by the Further Notice.

The Clear Channel Comments (p. 58) states that ". . . twenty-three members of Congress form both sides of the political spectrum have voiced support for a modest increase in the local radio ownership limits" in the larger markets. Congress is composed of approximately 540 members. If a majority of the total membership favored a modest increase, such information arguably (Congress is an elected body) could be deemed relevant to the issues specified in the Further Notice. Accepting the number 23 as the totality of members of Congress supporting a "modest" increase, it is accurate to state that approximately 517 members of Congress have not "voiced support for a 'modest' increase".[16] The reference to those members who voiced support (but equally applicable to those members who have not voiced support) is wholly irrelevant to the ultimate issue

[15] While the Clear Channel Comments repeatedly make use of "catch word" verbiage such as "stifle the radio industry"/"threatening the ability of free, over-the-air radio to remain viable" when describing the competitive challenges vis-à-vis satellite radio, ironically, such competitive challenges are equally applicable to the factual situation faced by the independent and small operators vis-à-vis the dominant economic group owners. The latter factual situation is conspicuously ignored in the Clear Channel Comments.

[16] Elections were held subsequent to the Comment filing date which may have affected the number provided by the Clear Channel Comments.

of whether radio ownership limits should be increased. What may be relevant are the "voices" who have filed Comments in this proceeding and who have participated in the FCC forums throughout the country.[17]

F. Efficiencies of Operation Through Group Ownership Is Theoretical, Dependent Upon the Specific Group Owner. Clear Channel Does not Allocate the Efficiencies and Economics that Flow from Group Ownership.

In support of increasing radio ownership limits, the Clear Channel Comments suggest that group ownership will be beneficial (by way of allotting resources) to group-owned stations in the smaller markets.

At page 57 of the Clear Channel Comments, it is stated

> "Rather, an owner would be able to allocate the increased efficiencies and economics that flow from group ownership in the larger markets to those stations under its control that required the most help. . . ."

Initially, it should be noted that Clear Channel is disposing of 448 smaller market stations (see Appendix C). Consequently, the stations "that required the most help" will no longer be Company stations. It also should be noted that Clear Channel now operates stations in the top 25 radio markets (Mt. Wilson Comments, Attachment 3, Mark Mays quote) and presumably operates radio stations in most of the top 100 radio markets. The presumption that group ownership could/can lead to efficiencies, however, depends upon the specific group owner. While the Clear Channel Comments are intended to persuade

[17] The referencing of 23 members of Congress as having "voiced support for a modest increase," coupled with the specific identification of Representative Fred Upton and his letter to Chairman Martin, constitute an undisguised and irresponsible ploy to utilize "Comments" as a methodology to inject politics into the decision-making process of an Independent Government Agency – in short, intended to curry favor with the Chairman.

the Commission that the Company would allocate resources to mid-sized and smaller markets, Clear Channel apparently does not allocate within its existing ownership framework.[18] Considering the fact that Clear Channel is now and has been a viable entity with an even more viable radio division, the question posed is why should the Commission accept such argument as a basis for increasing radio ownership limits in light of the Company's history of not allocating the benefits from group ownership to the more needy stations? The answer to the question is that the Clear Channel Comments consist of verbiage which is contradicted by Clear Channel conduct. Clear Channel does not now allocate the benefits from group ownership to its needy stations and reasonably cannot be expected to change its behavior. To the extent that financial benefits flow from increasing the radio ownership caps, reasonably it can be expected that such benefits will be utilized to meet the Company's primary objective – the maximization of profitability for its shareholders.

Moreover, it is difficult to identify whether Clear Channel stations in the larger markets or the mid-sized/smaller markets are the more needy in terms of receiving the benefits of the alleged increased efficiencies. The Clear Channel Comments at pages 56-57 state

> "The proposed increases in the level of permissible common ownership in the nation's largest markets would also provide the radio industry with help where it may be needed most, as large-market stations are currently facing particularly significant financial struggles. Throughout 2006, smaller radio markets have continued

[18] Specifically, at page 57, line 13, states "Thus a decision to modify the local radio caps in large radio markets has the potential to provide important public interests benefits [i.e., the allocation to the needy stations]. . . ." The terminology "has the potential to provide" implies that no such allocation has previously occurred.

> to outperform larger markets and this trend is predicted to continue."[19]

Three lines following the above quotation (p. 57, line 6), the Comments state

> "Rather, an owner would be able to allocate the increased efficiencies that flow from group ownership in the larger markets to those stations under its control that required the most help. . . ."

The "bottom line" is that the Clear Channel Comments are contradictory, ambiguous, disingenuous, do not support an increase in radio ownership limits and do not warrant serious consideration.

G. The Court of Appeals for the Third Circuit Mandated Caps on Local Radio Ownership Based on Market Share.

The Court's remand was not entirely open-ended. The Court's conclusions stated (Prometheus, p. 432),

> "The Commission's decision to retain a numerical limits approach to radio station ownership regulation is 'in the public interest.' Without numerical limits, radio markets risk becoming 'locked up' in the hands of a few owners (or even one owner) because all of the available radio frequency spectrum has been licensed – a high barrier to new market entrants. *Order* ¶ 288. Based on record evidence, the Commission justifiably concluded that numerical limits are necessary 'to guard against consolidation . . . and to ensure a market structure that fosters opportunities for new entry into radio broadcasting.' *Id.* ¶ 291. For example, a MOWG study found that, since the existing limits were imposed in 1996, the number of radio station owners declined by 34% even though the number of stations increased by 5.4%. George Williams & Scott Roberts, *Radio Industry Review 2002: Trends in Ownership, Format, and Finance* (MOWG Study No. 11) at 3 (Sept. 2002). Additionally, the record shows that today 10 parent companies – the largest of which, Clear Channel Communications, owns 1200 stations nationwide, or 10% – dominate the radio industry and

[19] The reference to ". . . large market stations are currently facing particularly significant financial struggles" ". . . smaller radio markets have continued to outperform larger markets. . ." is contrary to the Clear Channel Second Quarter 2006 Report, wherein Mark Mays stated "Our top 25 radio markets performed particularly well, generating the highest percentage growth of any of our markets." (See Mt. Wilson Comments, Attachment 3).

> control about two-thirds of both listeners and radio revenues nationwide. *Id.* at 4. In contrast, prior to the 1996 Act's deregulation, the largest nationwide radio station combinations had fewer than 65 stations each. *Id.*"

(Prometheus, p. 434),

> "The Commission does not explain why it could not take actual market share into account when deriving the numerical limits.[80] Had it proffered the 'market share is too fluid' rationale, we have already rejected that explanation in the context of the local television ownership rule and the Cross-Media Limits. We also note that the Commission has in the past extolled the value of audience share data for measuring diversity and competition in local radio markets.[81] So the Commission's reliance on the fiction of equal-sized competitors, as opposed to measuring their actual competitive power, is even more suspect in the context of the local radio rule." (Footnotes omitted).

A fair and reasonable reading of the Court's decision is that 1) the Court affirmatively concluded that ownership caps are necessary to guard against "over-consolidation"; 2) the Court affirmatively concluded that market share data is an essential factor in measuring competition; and 3) the adoption of rules without ownership caps and/or without the use of market share data as a factor to measure competition will not pass further judicial review. Nevertheless, Clear Channel's advice and recommendations to the Commission (Clear Channel Comments, pp. 59-66) is to ignore the Court's intent/mandate and to substitute the number of outlets for market share data as the appropriate standard for measuring competition – notwithstanding the fact that the Court has categorically rejected the number of market outlets as the measure for competition. The Court has effectively mandated market share data as a factor to be utilized in determining competition. Clear Channel's problem with market share data is that Arbitron market share data accurately reflects competition and the Company's economic dominance in the market place. (See Mt. Wilson Comments, Attachment 2).

With respect to Professor Hausman's Statement (Clear Channel Comments, Exhibit 2) pertaining to the "Volatility of Market Shares", such information would have been more relevant to the remand issues and to the Clear Channel "modest" request if the data provided information as to group ownership in the major markets. Such information would have identified specific market shares and the number of equal-sized competitors in the respective markets. Over the same time period as Professor Hausman's study, the market shares for the dominant entities in the Los Angeles Arbitron market (Clear Channel and CBS/Infinity) were as follows:

	Clear Channel	CBS/Infinity
2005	20.6%	18.4%
2004	20.2%	18.4%
2003	20.2%	19.0%
2002	19.9%	19.5%

These results indicate minute volatility, which means that actual market shares ARE a reliable guide to future competitive significance. Professor Hausman's contrary conclusion (based on a biased study which ignores factual information relevant to the remand issues) should be evaluated within the factual context that he was employed by Clear Channel to produce a document which would conclude that market share data was an inappropriate method for measuring competition.[20]

[20] Professor Hausman's Statement also addresses "Consolidation and Format Diversity" and "Consolidation and Advertising Prices." The matter of format diversity is irrelevant to the remand issues. Moreover, Professor Hausman does not define "format" or address the Commission's concern ". . . we are not certain how substantial the difference between many of these minor subcategories within major categories of formats are." (2002 Regulatory Review, p. 13740 at ¶ 310). As to the matter of "Advertising Prices," the Statement focuses on anticompetitive conduct and concludes that consolidation ". . . has not had anticompetitive consequences" on advertising rates. Separate and apart from the anticompetitive aspects on advertising rates resulting from consolidation, Mt. Wilson has lost advertising and has been unable to obtain new advertising directly attributable to Clear Channel's anticompetitive conduct – arising

Clear Channel's "problem" constitutes the precise reason why the Commission should adopt market share data (at least as a factor) in measuring competition. Consistent *with the Court's decision, the Commission's rules MUST retain radio ownership caps* and include market share data as a factor in measuring competition. To the extent that Clear Channel believes otherwise, its arguments should be directed to the Court, not to the Commission.

IV. Subcaps are Justifiable for the Purpose of Measuring Competition, Ensuring New Entrants Into Broadcasting, Preserving Diversity of Opinion and Preventing Anticompetitive Conduct

Attachment 2 to the Mt. Wilson Comments reflects Arbitron market share data for the Los Angeles radio market. The market share data for the Clear Channel stations is based on eight broadcast stations – three of which are AM stations. The market share data for Mt. Wilson stations is based on two broadcast stations – one of which is an AM station. While generally AM stations do not command an audience size comparable to FM stations (irrespective of the reason), AM stations are in fact a contributor to the market share data for the respective broadcast entities. Moreover, the number of broadcast outlets available to a group owner can be a factor in attaining economic dominance and, further, stifling competition. Section II of the Mt. Wilson Reply Comments describes Clear Channel's anticompetitive conduct which relies (as a lure to advertisers) on the number of outlets (among other factors) available to advertisers.

. . . Cont'd.
from Clear Channel consolidation and dominant economic power (see Mt. Wilson Reply Comments, p. 6, supra.).

Finally, the Court recognized the danger of not having numerical limits and approved the Commission's conclusion maintaining numerical limits (Prometheus, p. 432)

> ". . . the Commission justifiably concluded that numerical limits are necessary 'to guard against consolidation. . . and to ensure a market structure that fosters opportunities for new entry into radio broadcasting.'"

AM radio stations generally are less expensive than FM radio stations and therefore provide greater opportunity for new entrants. Absent AM subcaps, there will be less diversity of opinion, less opportunity for new entrants, less competition and the opportunity to further exploit anticompetitive conduct as already exemplified by Clear Channel.

V. **Conclusion**

The purpose of licensee Comments is to provide information based upon the respective licensee experience. The Comments submitted by Clear Channel not only do not reflect the Clear Channel experience but in fact are contradicted by the public statements of Clear Channel management. The Statement of Professor Hausman (proffered as the primary basis for the Clear Channel Comments arguments) did not provide information as to group ownership market share in the major markets (and particularly the top seventeen major markets for which the "modest" increase in group ownership is sought) – the core essence of the remand.

The facts submitted with the Mt. Wilson Comments comprise a) Arbitron Los Angeles radio market share data for a five-year span; b) public statements of Clear Channel management exalting the increase in Company revenue, the stellar performance of the radio segment beyond expectations, the Company-wide record of strong growth; and (c) examples of Clear Channel's anticompetitive conduct. In contrast to the Mt. Wilson Comments, the Clear Channel Comments are devoid of relevant facts – substituting, therefore, unsupported arguments (which include inconsistencies), irrelevant arguments unrelated to the remand issues, advice to the Commission that it should disregard the Court's clear intent pertaining to the necessity of maintaining ownership caps and the mandate to use market share data as a factor in measuring competition and the flawed Hausman Statement (i.e., it excluded core information relevant to the remand issues and essentially functions as an abstraction to the remand issues). In the addition to the absence of relevant facts, the Clear Channel Comments are guilty of a still greater sin, disingenuousness. To assert that the antitrust laws are sufficient to guard against anticompetitive behavior while the Company is contemporaneously engaging in anticompetitive behavior and to assert dire economic threats to Clear Channel while the contemporary Company Second Quarter 2006 Report reflects an increase in revenue, together with Company management publicly proclaiming stellar performance of the radio division beyond expectation/optimism as to 2006 growth prospects is not only disingenuous, but deceitful. In short, the Clear Channel Comments lack creditability.

The primary basis for increasing radio ownership caps is succinctly set forth in the statement of the Company's Chief Executive Officer, Mark P. Mays, ". . . we remain committed to generating profitable growth and cash returns for our shareholders." (Mt. Wilson Comments, Attachment 3). The beneficiaries of an increase in radio ownership caps are Clear Channel and a handful of group owners – governed by boardroom mandated profits; the loser is the public interest, less competition, less diversity of opinion.

Respectfully submitted

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(202) 239-3860

Its Attorneys

Dated: January 16, 2007

APPENDIX A

BusinessWeek .com

TOP NEWS January 12, 2007, 12:00AM EST

Satellite Static

XM and Sirius are being pressured to merge because of financial troubles and are discovering what others in the sector already know: It's a tough business

by Steve Rosenbush

Investors are agitating for a merger of XM Satellite Radio (XMSR) and Sirius Satellite (SIRI), the two providers of radio via satellites that orbit the earth. Speculation about a deal began last summer and gained momentum in early December, when Sirius cut its subscriber forecast for 2006 from 6.3 million to between 5.9 million and 6.1 million (see BusinessWeek.com, 12/5/06, "Sirius Sings the Holiday Blues"). Over the course of 2006, shares of XM and Sirius plunged 62% and 54% respectively, as investors fretted that the potential market wasn't big enough for two players.

Later in December, stock market pundit Jim Cramer proclaimed, in an interview with *BusinessWeek* Editor-in-Chief Stephen Adler, that Sirius Chief Executive Mel Karmazin needed to do a deal with his rival. "If Mel Karmazin does not merge with XM, he will not make it. That company cannot stand alone," Cramer said (see BusinessWeek.com, 12/25/06, "But Jim, What Do You Really Think?"). And on Jan. 10, analyst Eileen Furukawa of Citigroup (C) issued a research report saying that top executives at XM seemed more open to a merger, sending shares in both XM and Sirius higher (see BusinessWeek.com, 1/10/07, "Wedding Bells for XM and Sirius?").

SATELLITE STRUGGLES

Trouble in the satellite business? It's an issue that goes well beyond Sirius and XM. DirecTV (DTV) and rival satellite TV operator EchoStar (DISH) are struggling to survive as independent companies and may merge or be acquired by big telecom companies. These are just the latest in a long series of satellite operations that have discovered the difficulties of pulling profits from the skies by offering telecom services, Internet access, and more. In each case, lofty promises have given way to wrenching restructurings, and in some cases bankruptcy.

Satellite businesses have long looked easier than they actually are. "Terrestrial networks can build a little and add some customers and build a little more," says Matthew Desch, CEO of mobile satellite phone operation Iridium. "Satellite is different because you have to pay for the rockets and the satellites all at once."

He should know. The original Iridium, the predecessor to the company Desch now runs, was one of the most notorious flameouts in satellite history. The company was launched by Motorola (MOT) in the 1990s and began service in 1998 with a phone call by Al Gore, then Vice-President of the U.S. But the company filed for bankruptcy the next year, as service fell short of expectations and demand faltered. Motorola, which took in billions in revenues from supplying the original Iridium with equipment, faced multiple lawsuits, which it later settled out of court.

From: NAB SmartBrief [mailto:nab@smartbrief.com]
Sent: Wednesday, November 29, 2006 12:00 PM
To: Roy R. Russo
Subject: November 29, 2006 - Sirius, XM merger likely in next 18 months, analyst says

Top Story

- **Sirius, XM merger likely in next 18 months, analyst says**
  There's a 75% chance that either Sirius Satellite Radio or XM Satellite Radio Holdings will make a bid for the other by mid-2008, analyst Kit Spring of Stifel Nicolaus & Co. said. Such a move would generate $650 million in annual savings, according to a Nov. 27 report from Spring. But such a merger could face regulatory hurdles. The Denver Post/Bloomberg (11/28) E-mail this story

Business & Industry Report

- **NBC mulling major management changes**
  Jeff Zucker, CEO of the NBC Universal Television Group, is weighing whether to reorganize the network's entertainment division in Burbank, Calif., with possibilities to include naming Jeff Gaspin, who oversees programming for NBC Universal's entertainment cable channels and digital entertainment, to head all TV content, or to helm all cable operations, according to sources. The possible shakeup comes two weeks after the departure of Zucker's No. 2, Randy Falco. Los Angeles Times (free registration) (11/29) E-mail this story

- **Telemundo acquires studio, international distributor**
  In a bid to gain full control over the production and distribution of its domestic and foreign programming, Telemundo has assumed full ownership of Telemundo-RTI Productions and will acquire the assets of its foreign distributor, Tepuy International Corp. Patricio Willis, who had helmed Telemundo-RTI, will become president of the renamed Telemundo Television Studios, and Marcos Santana, president and COO of Tepuy, has been named president of Telemundo International. Mediaweek (11/28) E-mail this story

- **Clear Channel teams with Reuters for on-demand news**
  Under a new deal, Reuters will provide news and video content on-demand for 200

RBR TVBR Radio Business Report™ 30¢ daily
Voice of the Radio Broadcasting Industry®

Volume 23, Issue 242, Jim Carnegie. Editor & Publisher Thursday Morning December 14th, 2006

Radio News ©

RBR First

Broadcast lender reorganizing

RBR/TVBR has confirmed that a restructuring took place in the past few days at Wells Fargo Foothill, which is a major lender to radio, TV and other media. Our sources say the biggest change is that the company is shutting down the lending unit that dealt on the low end of the market, loans in the 1-10 million range, and will concentrate on the higher-margin business for larger broadcast loans. That is bad news for smaller operators, since Wells Fargo Foothill had been one of the very few nationwide lenders that would make media loans below 10 million bucks. Despite numerous contacts from RBR/TVBR, there is no official comment from the company yet on the reorganization. Wells Fargo Foothill made a major move to target the 1-10 million media loan market in late 2004 when it acquired Westburg Media Capital.

Tough month for satellite radio

November retail receiver sales dropped 45% for both XM and Sirius according to Wall Street analysts. The soft sales data has the analysts looking at whether to cut their 2006 subscriber estimates yet again. With November sales data from NPD, which tracks all sorts of retail sales, showing unit sales for both satellite radio companies off 45% from a year ago, Morgan Stanley analyst Benjamin Swinburne told clients that his estimates could be at risk, although he still expects subscriber numbers at the end of 2006 to be within the most recent guidance from the companies. Swinburne has projected XM to end the year with 7.9 million subscribers, while the company's range is 7.7-7.9 million. His projection for Sirius is 6.08 million, while the company range is 5.9-6.1 million. After seeing the soft November numbers, Jonathan Jacoby cut his year-end subscriber estimate for XM to 7.7 million from his previous 7.8 million. He is sticking with 6.1 million for Sirius, noting that while it also saw a sales decline in November, it increased its share of the retail market.

Bounceback

We want to hear from you.
This is your column, so send your comments and a photo to radionews@rbr.com

Below the Fold

Ad Business Report
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Should Satellite Radio Merge?

XM and Sirius have spent a lot on operations and programming even while moving back the target dates by which they expect to break even. Now, both are experiencing a painful trifecta of new circumstances as they enter their fifth and fourth years in service, respectively:

✓ The FM modulator probe by the FCC has cost both companies time to market for some products and added expense for redesigns;

✓ New subscribers aren't coming on as fast as they had been, while more automakers now plan to add iPod adapters to their vehicles;

✓ Automakers that install satellite radios are having a tough time selling new vehicles.

Wall Street analysts are asking whether the companies will ever be in the black. Some investors want a quick fix — like a merger.

A merger might make good business sense for shareholders; but it wouldn't serve the public interest. With a monopoly in pay radio, there would be no competition for hardware or subscription prices.

Consider what competition has wrought. Both spent billions of dollars to get themselves up and running, building studios, launching satellites and subsidizing receiver development. Sirius in particular spent a nail-biter of a first operational year, with satellites in space but no radios in the stores.

They've paid millions for high-priced talent to produce original programming. They offer programming that is interesting and well presented. Much of what's on satellite is good radio.

Sirius and XM are also using their spectrum for other businesses, such as real-time traffic and weather services, and both are developing the ability to deliver video.

So competition with each other has pushed innovation, to the benefit of consumers. Traditional radio, in turn, has been forced to adapt to the presence of satellite. That's good. But a single pay radio service would enjoy unfair competitive advantage against traditional broadcasters.

Also, XM and Sirius paid for spectrum, but the FCC still regulates how it's used; in exchange for approving a merger, the commission might decide one of those two chunks of S-band spectrum needs to be returned for re-auction.

In the consumer electronics world, satellite radio is now an established product category. This means radio prices will continue to drop at retail and the cost to make products are dropping as well. Lower prices usually means more sales, but the satcasters would receive less per radio as they get a percentage of each product sold.

Satellite has a finite window to reach more subscribers and cut costs before investors demand changes. The fourth-quarter selling season is crunch time and this may give merger discussions a boost.

But this trial balloon deserves to be shot down. The public, and the broadcasters who compete with these new satellite services, deserve that.

— RW

The era of DX'ing has come to an end now that the entire world is wired for the Internet. We no longer require the ionos-

APPENDIX B

IBOC DAB

02.16.05

NPR Moves Multi-Channel Forward

Network Seeks Manufacturers to Make Radios; It Will Provide Program Streams for Members

by Leslie Stimson

For some station executives, going digital only makes sense if there's an opportunity to create new programming to go along with the promise of better audio.

That's why this June, NPR plans to offer several program streams to member stations that plan to split their digital signals into multiple channels. By fall, the network hopes, receivers will be available to consumers to decode multi-channel digital radio.

Radio World has reported on the efforts of NPR and its partners Kenwood and Harris to test the concept of multi-channel digital. Now NPR is prepared to bring its Tomorrow Radio project to reality with plans for handling both the programming and hardware needs of member stations.

Anticipating a group purchase of receivers, the network is asking manufacturers to make HD Radios that can receive multiple digital signals. It is offering special, free, programming available to member stations to fill the channels with content.

The target date is June for the first of a planned four program streams consisting of classical, jazz, news/talk and another music channel. Format streams developed for the supplemental channels are seen as the ones most likely to grow and be supported by the network for a long time, sources close to NPR said.

Many in radio long have argued that digital only makes sense if the industry can deliver improved content as part of the transition, giving consumers sufficient reason to buy HD Radios – just as subscribers to satellite radio do so for the new content.

Mike Bergman, Kenwood vice president of new digital technologies, said Tomorrow Radio "is the single most important feature to promote HD Radio because it gives the consumer another compelling reason to buy" aside from great audio quality with digital radio.

Possible group buy

NPR released a Request for Information to licensed HD Radio receiver manufacturers at the recent CES convention in Las Vegas. Other HD Radio vendors were welcome to respond. A future group purchase could include 10,000 to 50,000 radios, said Mike Starling, NPR vice president of engineering and operations.

"It depends on what the manufacturers tell us about the price points, whether we can come to terms and actually execute a group buy. That's why it's an RFI as opposed to an RFP," or a Request for Proposal, he said.

NPR hopes to be able to craft a deal by the spring NAB show so it can place an order and have the units shipped in time for station fall fundraisers.

The radios would be used to seed the marketplace, probably as pledge premiums, and by station employees for station monitoring.

The RFI response deadline was Jan. 31. The network has brokered such group equipment buys in the past, he said.

Eventually, all stations would pay NPR for their radios, said John Kean, senior technologist at NPR.

While the multi-channel concept has garnered the most attention from the non-commercial world, commercial broadcasters are warming up to the potential of the supplemental digital channels. Several told Radio World they are looking at the concept.

At Ibiquity's press conference in Las Vegas, Entercom President/CEO David Field called the technology an "opportunity to create new radio stations to grow content."

Ibiquity Digital President/CEO Robert Struble said the extra channel capability of digital radio would "help these guys (representing different radio groups) light up a competitive battle" between each other and with satellite radio.

At the show, KCNV(FM) in Las Vegas became the 50th NPR member station to go HD Radio. It was featured in a supplemental audio demo at Ibiquity's booth.

Approximately 300 NPR member stations are in various stages of digital conversion, with funding for an additional 150 to 200 expected to be approved by the Corporation for Public Broadcasting this year, according to NPR executives.

How low can you go?

NPR hopes the FCC approves the multi-channel concept for HD Radio early this year.

In perceptual test results of Ibiquity's HDC codec at various bit rates, submitted to the commission in the fall, NPR said, "The new testing indicates that 48 kbps is perceived by most listeners as providing equal sound quality to the maximum rate of 96 kbps."

Optimum bit rate allocation varies according to format, so NPR hoped the agency would allow stations to determine their own bit rate allocation for multicasting.

The codec tests showed it was possible to achieve two near-CD quality channels, plus up to four additional voice-grade channels with minimal, if any, interference to existing analog radios, Starling said. Twelve codecs from nine vendors were tested.

In the initial tests last year, the main channel was 64 kbps and the supplemental channel was 32 kbps.

NPR referenced its "Report on Perceptual Tests of Low- and Very Low-Bit Rate Codecs," filed with the FCC - the results of testing that the network commissioned, along with the International Association of Audio Information Services and Ibiquity.

Participants wanted to see if the extended hybrid digital spectrum was suitable for radio reading service transmission. The testing measured subjective qualitative differences among the latest digital codecs that may be used for radio reading services.

The network stated, "Improved quality was achieved with readily available codecs compared to existing analog SCA technologies, both within a single extended hybrid partition and within two of the four available partitions. Based on these results, we believe radio reading services, and other specialized audience services, will be a practical service option via extended hybrid mode."

Reading services viable

"This would allow listeners who rely on these services to purchase commonly available mass-market receivers, ultimately freeing these services from reliance on specially manufactured SCA receivers, which historically have offered inferior quality service," it stated.

(For hybrid analog/digital broadcasting, the Ibiquity HD Radio system adds a number of OFDM carriers above and below the host analog signal. Groups of carriers are formed into frequency partitions about 6904 Hz each in width. Ten of the outer partitions form the main group, providing a 96 kbps digital stream for the primary audio channel [and optionally, supplemental audio]. Additional sets of partitions are allocated symmetrically within the pair of main partitions, called the extended hybrid mode. These interior partitions provide ancillary data streams at about 12.5 kbps each. Radio World will report further on these tests in a subsequent issue.)

Based on results in the tests, NPR asked the FCC for expedited authorization for public stations to begin digital multicasting to foster the development of diverse, new public programming services; eliminate the costs of retroactive upgrades; and afford stations the opportunity to streamline operations.

The network hopes the commission approves the multicasting initiative in the first half of the year.

APPENDIX C

NAB SmartBrief

broadcasters
Serving Every Local Community

Top Story

- **448 stations on the market in wake of CC sale**

  Clear Channel will spin off 448 radio stations as part of its record-setting private-equity deal with Bain Capital Partners and Thomas H. Lee Partners. Analysts note that, despite the huge volume in inventory, it is doubtful that the acquisition price for individual stations will be discounted. It remains to be seen whether local, independent buyers will be attracted to the available stations, or if other radio networks will look to expand their holdings. Radio & Records (11/16)

  - **Clear Channel puts 42 TV stations on the block:** As part of its impending sale, Clear Channel will sell 42 TV stations in 24 markets. According to experts reached by TVNEWSDAY, the stations are expected to fetch between $1.2 billion and $1.5 billion. TVNEWSDAY (free registration) (11/17)
  - **CC's station sell-off and country music:** The country music industry will be closely watching Clear Channel Communication's planned sale of 448 small-market radio stations, including about 120 country outlets. The Tennessean (Nashville) (11/17)

Business & Industry Report

- **NAB opposes Senate "bailout" of EchoStar**

  U.S. Sens. Wayne Allard, R-Colo., and Patrick Leahy, D-Vt., introduced a bill yesterday that would block a court order requiring satellite operator EchoStar to stop sending distant network TV station signals to 800,000 subscribers on Dec. 1. NAB issued a statement against the bill. "NAB strongly opposes a bailout by Congress of a habitual copyright infringer that has skimmed millions of dollars infringing copyrights and violating the law on a nationwide basis for eight years or more," spokesman Dennis Wharton said. Broadcasting & Cable (11/17)

RBR TVBR Radio & Television Business Report
Voice of the Broadcasting Industry
IMPORTANT NEWS BULLETIN

CCU buyout set at 37.60 per share; Station sales coming

A private equity bidding consortium of Thomas H. Lee and Bain Capital emerged the victor in the auction of Clear Channel Communications, beating the competing consortium which had been working with the Mays family for months to put together a buyout of the company's public shareholders. The winning bid totals about 18.6 billion. Add in some 8.1 billion in debt and the buyout values Clear Channel at around 26.7 billion. In a most unusual move, Mark and Randall Mays will stay on to run the company, despite the fact that they had been working with the other bidding group.

At the same time, Clear Channel announced plans for some large-scale station sales to optimize its portfolio. Mark Mays says 448 of the current 1,150 radio stations will be put up for sale - all of them outside the top 100 markets. Also, the entire 42-station Clear Channel Television group is being put on the market. The company said the assets being put up for sale account for less than 10% of Clear Channel's total revenues.

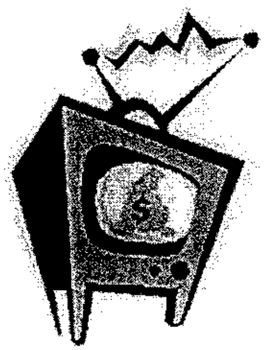
The sale of Clear Channel to the Lee/Bain group is subject to regulatory approvals and a vote of Clear Channel's

RBR TVBR Television Business Report
Voice of the Television Broadcasting Industry

Volume 23, Issue 225, Jim Carnegie, Editor & Publisher — Friday Morning November 17th, 200

TV News

Clear Channel TV for sale as parent is sold



Employees of Clear Channel Television could not have been very surprised yesterday when the entire 42-station (including LMAs, multicasts and such) operation was put up for sale. Since Clear Channel Communications announced that it had put itself up for sale to the highest bidder (10/26/06 TVBR #209) there had been speculation that the TV division might be put up for sale to reduce the debt that would have to be taken on for the buyout of public shareholders. That speculation turned to fact yesterday and Clear Channel CEO Mark Mays also announced that 448 radio stations in 90 smaller markets, from Boise, ID to Yuma, AZ, were also being put up for sale. The TV and radio stations to be sold were said to account for less than 10% of the company's annual revenues. In the deal announced just before the stock market opened for business yesterday (RBR/TVBR Alert 10/16/06), two private equity firms, Thomas H. Lee Partners and Bain Capital, will buy out all shareholders of Clear Channel for 37.60 per share, a 25% premium from where the stock was trading before the company announced that it had hired Goldman Sachs to entertain offers. Company co-founder Lowry Mays and his two sons, CEO Mark Mays and President/CFO Randall Mays, will be investors in the new owner and Mark and Randall will stay on to run the company. The payout to shareholders will total about 18.6 billion and the 8.1 billion in debt to be assumed or paid off brings the entire value for Clear Channel to around 26.7 billion. That is quite a run-up from the 125,000 that Lowry Mays and Red McCombs paid for their first station - KEEZ-FM (now KAJA) San Antonio, TX - in 1972.

TVBR observation: Whether one company, such as LIN, buys all of Clear Channel TV, or it is sold off in pieces to several buyers, the new owner(s) will almost certainly be more focused on television than Clear Channel ever was. The TV unit wasn't neglected - indeed, it even made a creative, strategic acquisition in Rochester just this month (11/15 TVBR #223) - but TV was such a small part of Clear Channel that it was lumped into the "other" category for financial reporting. You could make the analogy that the TV unit at Clear Channel is like the ABC Radio unit at Disney - neither outstanding over-performance nor dismal under-performance could make any dent on the corporate bottom line. Just as Disney is divesting radio to a radio-focused buyer, Clear Channel is divesting TV.

Bounceback

We want to hear from you.
This is your column, so send your comments and a photo to tvnews@rbr.com

TV Media Moves

Zaslav jumps to Discovery

David Zaslav is the new President and Chief Executive Officer of Discovery Communications. He had been President of NBC Universal Cable and Domestic TV and New Media Distribution.

Below the Fold

Ad Business Report
Sony effort for PlayStation3
Debuts today with a major marketing Effort for the holiday's...

Media Markets & Money
New market for New Vision
Added a market as driving the group toward the 15-20 market threshold...

Washington Media Business Report
But I thought you
Were going to handle it Namely license renewal...